

MEMORANDUM

Date: July 13, 2016

Re: Medical Marijuana Initiated Measure

An initiated measure sponsored by a group of citizens proposes legislation to legalize the use of medical marijuana. State law prevents the Department of Health (DoH) from supporting or opposing an initiated measure. The DoH is able to provide factual information regarding the measure and its implementation should it be approved by the voters. This memo provides an analysis of the measure and identifies some of the additional legislation and rulemaking that would be required in order to implement the measure.

MEDICAL MARIJUANA

Marijuana is a psychoactive drug produced by the *Cannabis sativa* plant that contains over 400 chemicals. At least two active ingredients are of interest from a medical perspective; tetrahydrocannabinol (THC) and cannabidiol. THC is the substance that contains psychoactive properties. Medications containing THC have been approved by the Federal Drug Administration (FDA) for specified conditions and are currently available in North Dakota by prescription. Cannabidiol is currently undergoing FDA testing and is expected to be available by prescription later this year.

Despite the legalization of marijuana by states, both recreational and medicinal marijuana remain illegal under the federal Controlled Substances Act.

INITIATED MEASURE

The initiated measure would add a new chapter to Title 19 of the North Dakota Century Code providing for the use of medical marijuana for defined debilitating conditions. The initiated measure does not provide a delayed implementation date. If it is approved by the voters in November, the initiated measure will take effect 30 days after it is passed. Although the DoH would make every reasonable effort to comply with the law if passed, the need for additional financing and legislative clarifications, along with the necessity to create sophisticated databases and hire additional staff, will likely make implementation within 30 days difficult to achieve.

STATUTORY LANGUAGE

The language of the act provides:

- All forms of marijuana can be used for medical purposes, including smoking.
- Individuals of any age, including children, are able to obtain a referral for medical marijuana in any form.
- The measure identifies a list of conditions eligible for obtaining a medical marijuana referral.
- Compassionate Care Centers are allowed to possess up to 1,000 marijuana plants.
- Designated caregivers are allowed to possess up to eight marijuana plants.

- Qualified individuals who live more than 40 miles from a compassionate care center are allowed to possess up to eight marijuana plants.
- Qualified individuals who do not grow their own marijuana plants are able to obtain a “usable amount of medical marijuana” every 14 days. A usable amount of marijuana is defined as “three ounces or less of usable marijuana.” Usable marijuana means “parts of the plant and any mixture or preparation of the plant.”

FINANCIAL

- The cost to administer the measure in the first biennium would be \$8.7 million dollars; this would include ongoing costs of \$7.3 million and one-time costs of \$1.4 million (the DoH assumed two compassionate centers when preparing these calculations).
 - Ongoing costs of \$7.3 million include overall program administration; registration processes; and program compliance, which includes enforcement, onsite reviews and random inspections of qualified caregivers/qualified patients and two compassionate care centers.
 - One-time costs of \$1.4 million include office equipment, office space, security and establishment and maintenance of an electronic registration system.
- The measure will require the addition of 32 full time employees.
- The incremental net costs for two additional compassionate care centers is \$1.2 million and requires three additional full time employees.
- Revenue generated from registration and fees is not sufficient to cover the costs of implementation or the ongoing costs associated with the measure.
- The measure does not provide a source of revenue for the initial implementation costs. A revenue source would be needed to develop and implement the law should it be passed.
- The measure provides for a continuing appropriation but does not identify the details relevant to the appropriation. Additional legislation would be necessary to identify the specifics.

ADDITIONAL LEGISLATION AND RULEMAKING

- The measure does not provide the DoH with rulemaking authority.
 - Additional legislation would be necessary to provide the department with that authority.
- Portions of the measure conflict with the Administrative Agencies Procedures Act.
 - Additional legislation would be necessary to address the conflicts.
- The measure provides each individual with access to the same amount of medical marijuana. Scientific research regarding the active ingredient Cannabidiol is currently occurring and should yield scientific results in the near future.
 - Additional legislation would be necessary to provide variance in dosage consistent with future scientific testing results.
- The measure does not provide requirements for safe packaging.
 - Additional legislation would be necessary to ensure packaging meets safety standards.
 - Additional legislation would also be necessary to address inconsistencies pertaining to packaging requirements throughout the measure.
- The measure does not provide any requirements pertaining to where medical marijuana can be used.

- Additional legislation would be necessary to address whether restrictions on smoking within various establishments will include medical marijuana use.
 - Additional legislation would be necessary to address student use of medical marijuana on school property.
- The measure references and defines designated caregivers. Designated caregivers are individuals who “manag[e] the well-being of one to five qualified patients...”
 - Additional legislation would be necessary to identify the legal responsibilities of designated caregivers.
 - Additional legislation would be necessary to identify the qualifications for becoming a designated caregiver.
 - Additional legislation would be necessary to ensure designated caregivers are not participating in the unauthorized practice of medicine.
- The measure references a number of terms which are not specifically defined. Additional legislation would be necessary to define:
 - Quality Testing
 - Primary Caregiver
 - Excluded Felony
 - Administrative Withdrawal
- The measure provides standards for the DoH to follow when adding to the list of conditions for which medical marijuana can be obtained. The standard allows the DoH to add a condition to the list if “marijuana is more likely than not to have the potential to be beneficial to treat or alleviate the debilitation associated with the medical condition or treatment.”
 - Additional legislation would be necessary to create an objective legal standard for adding conditions to the list of eligible conditions.
- The measure provides that decisions by the DoH regarding the addition of eligible conditions are subject to judicial review, but does not identify which district court has jurisdiction.
 - Additional legislation would be necessary to address jurisdictional issues.
- The measure requires testing and sampling of marijuana.
 - Additional legislation would be necessary to establish standards or baselines against which marijuana properties are tested.
- The measure requires Compassionate Care Centers to inform patients of “safe smoking techniques.”
 - Additional legislation would be necessary to develop standard language and a legal basis for Compassionate Care Centers to communicate and identify “safe smoking techniques” and potential side effects.
- The measure provides liability for driving under the influence of marijuana.
 - Additional legislation would be required to address the legal standard for both how intoxication is measured and what level of intoxication is considered the limit for driving.
- The measure provides confidentiality provisions for records and client information.
 - Additional legislation would be necessary to provide the DoH with the authority to share confidential information with the appropriate licensing boards, Attorney General’s Office and law enforcement.

- The measure requires Compassionate Care Centers to be non-profit entities, but also references potential investors.
 - Additional legislation would be necessary to address this conflicting language.
- The measure does not allow designated caregivers who have committed an “excluded felony” to obtain a registration card.
 - Additional legislation would be necessary to determine which felony convictions prevent an individual from becoming a designated caregiver.
- The measure requires the DoH to notify caregivers when a patient is no longer eligible to receive services. Prior to the DoH notifying the caregiver, the patient must notify the department that they are no longer eligible. Eligibility information is only available to the department through the patient.
 - Additional legislation would be necessary to limit the legal liability on the department if the patient fails to notify the department of ineligibility.
 - Additional legislation would be necessary to address penalties for patients who fail to notify the department of ineligibility.
- The measure requires inventory discrepancies be reported to the DoH and law enforcement.
 - Additional legislation would be necessary to address penalties for failure to report discrepancies and what would be done with the reported discrepancies.
 - Additional legislation would be necessary to provide a variance in dosage consistent with future scientific testing results.
- The measure requires application fees be paid by either cashier or personal check.
 - Additional legislation would be necessary to address banking regulations.

LEGAL IMPLICATIONS

- Both recreational and medical marijuana remain illegal under the federal Controlled Substances Act. Additional research would be necessary to identify potential legal implications.
- The measure requires application fees to be paid with a personal or cashier’s check. Additional research would be necessary to identify potential legal implications for the Bank of North Dakota.